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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/698,735	10/27/2000	Mark D. Purgett	53494USA4B.017	8925

7590 11/28/2001

3M Innovative Properties Company  
Office of Intellectual Property Counsel  
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St Paul, MN 55133-3427

EXAMINER

CAIN, EDWARD J

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 11/28/2001

9

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/698,735

Applicant(s)

Pergett et al

Examiner

Edward Cain

Group Art Unit

1714

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 7/17/01.
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 37-46 is/are pending in the application.  
Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 37-46 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

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1. The response received July 17, 2001 has been made of record.

Claims 37-46 are pending.

2. Claims 37-46 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-38 of U.S. Patent No. 6,166,106. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the application variously encompass or are encompassed by the claims of the patent.

Applicants arguments in traversal of this rejection are based on the statement that the claims of the instant applicant "are claimed in a different manner" than the claims of the patent.

The examiner does not disagree. This is, in fact, the reason why an obvious type double patenting rejection was made rather than a statutory double patenting rejection.

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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4. Any inquiry concerning this communication should be directed to Edward Cain at telephone number (703) 308-0042.

E. CAIN: vrr  
November 13, 2001

A handwritten signature in black ink, appearing to be 'E. Cain', with a long, sweeping horizontal line extending to the right.